

P2.C17. PART 2, CHAPTER 17INTERNATIONAL AGREEMENTSP2.C17.1. GENERAL

P2.C17.1.1. International agreements for fuel operations are a critical part of the worldwide fuel network required to support the U.S. Armed Forces. International agreements consummated with the military forces of foreign countries provide a variety of fuel support and fuel services, as described in section P2.C17.3., below. Prior to 1993 and the implementation of Phase II, most agreements for fuel support were negotiated and managed between the individual Combatant Command or Military Service and foreign government ally. Other agreements were negotiated by the Defense Energy Support Center (DESC) to meet unique requirements. As a result of Phase II, all Combatant Commands and Military Services' international agreements for fuel support will transfer to DESC for management, administration, and negotiation. With this transition, all Combatant Commands and Military Services will benefit from agreements formerly written and used primarily by a single Combatant Command or Military Service. Upon successful transition, DESC-FGI, in coordination with DESC's Counsel, appropriate Commodity Business Unit(s), region(s), and field office(s) shall formalize all international fuel agreements in support of the Military Services and other DESC customers, as appropriate. In some instances, a Combatant Command involvement in fuel support agreement negotiations is critical due to the political climate in the foreign country. In such instances, the Combatant Command and DESC shall collaborate to determine if the Combatant Command or DESC should sign the agreement.

P2.C17.1.2. The Military Services shall provide copies of existing fuel agreements to DESC-FGI. DESC-FGI, in coordination with the Military Services, shall determine when and how international agreements for fuel will be transferred to DESC. DESC shall negotiate and administer all fuel related international agreements.

P2.C17.2. DEFINITIONS. For purposes of this regulation, the following definitions apply:

P2.C17.2.1. International Agreement. Any agreement that is concluded with a foreign government (including their agencies, instrumentalities, political subdivisions or international organizations), signed or agreed to by any employee or military officer of DESC which signifies the intention of the parties to be bound in international law or having any legal consequence to DESC. Such agreements are classified as international agreements whether denominated by a Memorandum of Understanding (MOU), Memorandum of Agreement, Contract, Arrangement, Statement of Intent, Letter of Intent, Statement of Understanding, or any other name connoting a similar legal consequence. Oral agreements that meet these criteria are also international agreements and must be reduced to writing by the DESC representative who enters into the agreement. Contracts awarded to commercial companies are not normally international agreements. Foreign Military Sales (FMS) program agreements are not considered international agreements for purposes of this chapter. When there are doubts as to whether an agreement is or may be an international agreement, the agreement should be treated as one until reviewed by Counsel (DESC-G).

P2.C17.2.2. Negotiation. Communication by any means, of a position or an offer, on behalf of DESC to an agent or representative of a foreign government or an international organization in such

detail that the acceptance in substance of such position or offer would result in an international agreement. Negotiation also includes any such communication conditioned on later approval by higher authority. Negotiation excludes preliminary and exploratory discussions or routine meetings where no draft documents are discussed, so long as such discussions are conducted with the understanding that the views communicated do not and shall not bind, or commit any side, legally or otherwise.

P2.C17.2.3. Conclusion. The act of signing, initialing, responding, or otherwise indicating the acceptance of an international agreement, as then negotiated, by the DESC chief negotiator or any other designated employee of DESC.

P2.C17.3. AUTHORITY. Pursuant to DoD Directive 4140.25, paragraph 5.2.4. and applicable delegations, DESC is authorized to negotiate and conclude international agreements for energy commodities, additives, laboratory testing, facilities, pipelines, any related services, replacements-in-kind, and fuel exchanges in accordance with DoD Directive 5530.3.

P2.C17.4. TYPES OF AGREEMENTS. Agreements may include provisions for all types of fuel related supplies and services. Such agreements may be unilateral or bilateral and may benefit a single Combatant Command, U. S. Military Service, or multiple Services. Each agreement is unique and is tailored to the needs of the affected parties. The following types of agreements shall be concluded by DESC:

P2.C17.4.1. Replacement-In-Kind (RIK). RIKs are agreements between the United States Government and a foreign government to provide reciprocal refueling of the Military Services' aircraft, vehicles, and equipment. Transactions are documented, balanced, and values offset on a periodic basis. The country owing product normally replaces product to the owed party, but financial reimbursement of the balances can also be arranged. RIKs work best with countries where significant reciprocal refueling occurs. The principle advantage of these agreements is to allow countries to lift fuel at another country's military locations without the necessity of billing for each transaction. NATO standardization procedures allow for cross-servicing, but cross-servicing may be extended to non-NATO nations, as well. RIKs have been used extensively by the Air Force. See "Replacement-In-Kind" in the definition section of this publication.

P2.C17.4.2. Fuel Exchange Agreement (FEA). FEAs are similar to RIKs. FEAs provide for bunkering of ships, but can include the refueling of aircraft on carriers, on land, and air to air. FEAs have been used extensively by the Navy. See "Fuel Exchange Agreement" in the definition section of this publication.

P2.C17.4.3. Storage. Storage agreements provide for storage of U.S. product in foreign governments' storage facilities. These storage locations are either operated by a foreign military or via a commercial contractor acting as an agent for the foreign government. Storage locations may be on-base, off-base storage depots, or an integral part of a petroleum distribution system.

P2.C17.4.4. Pier Services. Pier service agreements provide for the use of a foreign government's pier needed by the U.S. for loading or offloading MSC-chartered vessels, tankers, or Military Services' ships. Pier service agreements are normally tied to storage and pipeline agreements.

P2.C17.4.5. Pipelines. Pipeline agreements provide for the use of a foreign government's pipelines to move U.S. product to military bases. These agreements often include storage services. Services are often provided by contractors acting as agents for foreign governments.

P2.C17.4.6. Quality Assurance (QA) and Quality Surveillance (QS). QA and QS arrangements are normally tied to other storage and movement contracts, but, as necessary, can be stand-alone agreements.

P2.C17.4.7. Additives. Arrangements for additives are normally included in other storage and movement agreements, but can be stand-alone agreements, as necessary.

P2.C17.5. REQUESTS FOR FUEL SUPPORT FROM FOREIGN GOVERNMENT ALLIES. The Military Services, DESC components, or other government agencies requiring fuel support from foreign governments shall forward their requirements to DESC-FGI. The international agreement process takes approximately 20 months to complete. Therefore, the Military Services must provide their requirements in sufficient time to allow for processing and negotiation. In some cases, supplies and services arrangements may be agreed to before an international agreement has been concluded. All requests shall include, as a minimum, the following information:

P2.C17.5.1. Country.

P2.C17.5.2. Military Service or other agent to negotiate with the foreign country.

P2.C17.5.3. A statement of requirement (SOR) shall be provided. The SOR should include a detailed explanation of the type of fuel and quantity required, related fuel equipment and services, and the required storage, pipeline, or pier requirements.

P2.C17.5.4. The period covering the agreement. The period can be a specific period to accommodate an exercise, or it can be a recurring requirement.

P2.C17.5.5. The foreign government's point of contact.

P2.C17.5.6. The location in the foreign country where fuel, storage, or service is required.

P2.C17.5.7. The Military Service's point of contact and telephone number, e-mail address, and other pertinent information.

P2.C17.6. RESPONSIBILITIES

P2.C17.6.1. The Chief, Facilities & Distribution Management, Global Support Division (DESC-FG) shall be responsible for the overall management of international agreements applicable to DESC. This responsibility includes but is not limited to:

P2.C17.6.1.1. Coordinating DESC's representation at all meetings where negotiations regarding an international agreement will be conducted.

P2.C17.6.1.2. Developing Terms of Reference (TOR) and Letters of Authority (LOA) for use by personnel representing DESC in international agreement negotiations.

P2.C17.6.1.3. Obtaining requisite authorities for DESC to negotiate and conclude international agreements on behalf of the Military Services and the United States.

P2.C17.6.2. The Chief, Facilities & Distribution Management, International Logistics Branch, (DESC-FGI) shall provide an individual experienced in international agreements to:

P2.C17.6.2.1. Assist DESC-FG in the preparation for negotiations with foreign governments and international organizations.

P2.C17.6.2.2. Assist in developing TOR and LOA for use by personnel representing DESC at international agreement negotiations.

P2.C17.6.2.3. Participate as a member of the DESC negotiating team.

P2.C17.6.3. The Office of Counsel (DESC-G) shall:

P2.C17.6.3.1. Maintain the central repository for all international agreements that are coordinated, negotiated, concluded, or funded by DESC and transmit two copies of each international agreement, not later than 20 days after the agreement entered into force, to the General Counsel, DLA or other DLA office, as may be required.

P2.C17.6.3.2. Provide an attorney to:

P2.C17.6.3.2.1. Assist DESC-FG in the preparation for negotiations with foreign governments and internal organizations.

P2.C17.6.3.2.2. Assist in developing TOR and LOA for use by personnel representing DESC in international agreement negotiations.

P2.C17.6.3.2.3. Participate as a member of the DESC negotiating team, as required, and provide legal advice and review of agreement documents.

P2.C17.6.3.2.4. Prepare, process, and coordinate all legal and fiscal memoranda in compliance with the laws, directives, and memoranda from higher authority in regard to international agreements.

P2.C17.6.4. The Chief, Facilities & Distribution Management, Facilities Management Branch, (DESC-FGM) shall provide individuals experienced in inventory management, scheduling, and/or requirements determination to:

P2.C17.6.4.1. Assist DESC-FG in the preparation for negotiations with foreign governments and international organizations.

P2.C17.6.4.2. Assist in developing TOR and LOA for use by personnel representing DESC in international agreement negotiations.

P2.C17.6.4.3. Participate as a member of the DESC' negotiating team, as required.

P2.C17.6.5. The Director, Bulk Fuels shall provide individuals experienced in product requirement formation, product acquisition, distribution, quality, and technical to:

P2.C17.6.5.1. Assist DESC-FG in the formulation of requirement(s).

P2.C17.6.5.2. Assist DESC-FG in the determination of product acquisition options.

P2.C17.6.5.3. Serve as functional experts to DESC-FG on distribution, quality, and technical matters.

P2.C17.6.5.4. Participate as a member of the DESC negotiating team. The Director, DESC-B shall select the appropriate DESC-B representatives required based on the type of international agreement under discussion.

P2.C17.6.6 The Director, Resources Management (DESC-R) shall provide individuals experienced in financial and accounting procedures to:

P2.C17.6.6.1. Assist DESC-FG in the preparation for negotiations with foreign governments and international organizations.

P2.C17.6.6.2. Assist in developing TOR and LOA for use by personnel representing DESC in international agreement negotiations.

P2.C17.6.6.3. Participate as a member of the DESC negotiating team, as required.

P2.C17.6.6.4. Manage the financial aspects of the agreements to include reconciliation and cross-servicing of accounts, repayment and settlement, transaction processing, and validation of fuel invoices.

P2.C17.6.6.5. DESC-R shall coordinate reconciliation meetings with the Conference Chair and member countries to arrange for the financial settlement and cross-servicing of accounts.

P2.C17.7. INTERNATIONAL AGREEMENT PROCESS. The international agreement process employed by DESC is as follows:

P2.C17.7.1. A Military Service or Federal Agency shall submit a requirement for fuel support for a specific location.

P2.C17.7.2. DESC shall analyze the requirement and determine if support is more appropriate through one of the following:

P2.C17.7.2.1. FAR contract with a commercial contractor.

P2.C17.7.2.2. International agreement with a foreign government.

P2.C17.7.3. DESC shall adhere to the procedural requirements of DoD Directive 5530.3 for international agreements..

P2.C17.7.4. DESC-FGI shall advise OSD of the intent to enter into an international agreement with the particular foreign country and obtain its concurrence.

P2.C17.7.4.1. DESC-FGI shall prepare a Summary Statement of Intent (SSOI) stating the requirement, need, and authority for the international agreement and forward to DESC-G.

P2.C17.7.4.2. DESC-G shall forward the SSOI to OUSD(AT&L) for coordination with OUSD(P), OSD-GC, OUSD(C) and the Department of State.

P2.C17.7.4.3. When DESC-G receives authorization to develop and negotiate an international agreement, DESC-G shall forward the authorization DESC-FGI.

P2.C17.7.5. Authority to negotiate and conclude an international agreement (international agreement authority) shall also be obtained by DESC-FG from the Director, DESC. The request for international agreements authority shall include a general description of the requirements, a Letter of Authority (LOA), and a letter for appointing the negotiating team for the Director's signature. DESC-G shall prepare a legal and fiscal memorandum in support of the proposed agreement.

P2.C17.7.6. DESC-FGI shall collaborate with the Military Services or Federal Agencies to develop a draft agreement that clearly states the U.S. requirements and expectations. Each document shall be in accordance with DoD Directive 5530.3. DESC-FGI shall coordinate the draft agreement with the applicable DESC Region, DESC-G, DESC Commodity Business Units, Military Service(s), and the Combatant Command.

P2.C17.7.7. Once the Director, DESC, grants authority to negotiate and/or conclude an international agreement, and approval has been obtained from OUSD(AT&L), DESC-FGI, the negotiating team, and the DESC Regional Office, as applicable, shall begin negotiations with the foreign government on the proposed agreement.

P2.C17.7.8. When negotiations are completed and the agreement is in final draft, DESC-FGI shall re-coordinate the agreement.

P2.C17.7.8.1. DESC-FGI shall update the SSOI and submit to DESC-G.

P2.C17.7.8.2. DESC-G shall forward the revised SSOI and the final draft copy of the agreement to OUSD(AT&L) for coordination OUSD(P), OSD-CG, OUSD(C), and the Department of State.

P2.C17.7.8.3. Approval to conclude from OUSD(AT&L) shall be forwarded to DESC-FGI and the negotiating team.

P2.C17.7.9. If the Director, DESC did not previously grant conclusion authority, DESC-FGI shall submit a request for the authority to conclude the agreement. The request shall include a final draft copy of the agreement and request appointment of the signatory.

P2.C17.7.10. The Director, DESC, or delegate, usually the Director, Facilities and Distribution Management, or the DESC Regional Commander, shall sign the agreement. The United States signatory shall be a level equal to the signatory of the foreign government.

P2.C17.7.11. DESC-FGI shall provide a copy of the completed international agreement to DLA-GC, OUSD (AT&L) and the Department of State, as required by the Case Act.